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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,307	06/20/2001	Adam Kolawa	41182/JEC/P396	4570
23363	7590	02/23/2005	EXAMINER	
CHRISTIE, PARKER & HALE, LLP			SELLERS, DANIEL R	
PO BOX 7068				
PASADENA, CA 91109-7068			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/885,307	KOLAWA ET AL.	
	Examiner	Art Unit	
	Daniel R. Sellers	2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 June 2001.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-45 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-45 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 20 June 2001 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>see attachment</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

Continuation Sheet (PTOL-326)

Application No.

10/12/01
07/02/04
09/28/04

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings are of an informal nature and do not meet the criteria set forth in 37 CFR 1.84. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-4, 6-15, 17-21, 23-27, 29-37, 39-43, and 45 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Gang et al., U.S. Patent Application Publication 2003/0055516 (hereinafter Gang).

4. Regarding claim 1, the method for creating a customized audio program, see Gang. Gang teaches audio characteristic information including acoustic information is

associated with an audio piece. Gang also teaches the user preference information and the comparison of this information with the audio characteristic information (p. 1, ¶ 0005, lines 8-11). They then teach that an audio piece is selected according to the comparison (p. 1, ¶ 0005, lines 11-14).

5. Regarding claim 2, the further limitation of claim 1, Gang teaches that the characteristic information indicates subject matter (p. 3, ¶ 0028, lines 4-9 and see Appendix p.9-19).

6. Regarding claim 3, the further limitation of claim 1, Gang teaches that the audio includes music.

7. Regarding claim 4, the further limitation of claim 1, Gang teaches that the audio includes voice.

8. Regarding claim 6, the further limitation of claim 1, Gang teaches that the audio preference information includes theme information (Appendix, p. 9, section titled ‘Genre’).

9. Regarding claim 7, the further limitation of claim 1, Gang teaches the downloading of the audio piece into memory (p. 7, ¶ 0068, lines 8-9, Fig. 1, unit 74, and p. 1, ¶ 0008, lines 1-4). It is inherent that the “computational device” has memory to store downloaded audio pieces.

10. Regarding claim 8, the further limitation of claim 1, see the preceding argument with respect to claim 7. The “computational device” receives the transmitted information.

11. Regarding claim 9, the further limitation of claim 8, Gang teaches the use of a broadcast network (Fig. 1, unit 78 and Fig. 2, unit 100).
12. Regarding claim 10, the further limitation of claim 1, see the preceding argument with respect to claim 7. Gang teaches the transmitting of an audio piece to a client.
13. Regarding claim 11, the further limitation of claim 10, see the preceding argument with respect to claims 7 and 9. Gang teaches the transmitting over a computer network.
14. Regarding claim 12, the method of creating a customized audio program, see the preceding argument with respect to claims 1, 7, and 9. Gang teaches the steps of receiving audio preference information, audio characteristic information, a comparison of the two separate pieces of information, an identification of an audio piece using the comparison, receiving the audio piece over a broadcast channel, and the storing of the piece in memory.
15. Regarding claim 13, the further limitation of claim 12, see the preceding argument with respect to claims 12 and 2. Gang teaches the subject matter information.
16. Regarding claim 14, the further limitation of claim 12, see the preceding argument with respect to claims 12 and 3. Gang teaches that the audio pieces include music.
17. Regarding claim 15, the further limitation of claim 12, see the preceding argument with respect to claims 12 and 4. Gang teaches that the audio pieces include voice.

18. Regarding claim 17, the further limitation of claim 12, see the preceding argument with respect to claim 6. Gang teaches themes in the user selection, and a system for identifying audio preference information associated with the selection (see the Appendix, p.9-19).
19. Regarding claim 18, the method of creating a customized audio program, see the preceding argument with respect to claim 12. Gang teaches these features. Gang also teaches the use of databases for the storage of the preference information and the audio characteristic information (p. 1, ¶ 0005, lines 14-18, and Fig. 2, unit 108).
20. Regarding claim 19, the further limitation of claim 18, see the preceding argument with respect to claims 18 and 2. Gang teaches the subject matter information.
21. Regarding claim 20, the further limitation of claim 18, see the preceding argument with respect to claims 18 and 3. Gang teaches that the audio pieces include music.
22. Regarding claim 21, the further limitation of claim 18, see the preceding argument with respect to claims 18 and 4. Gang teaches that the audio pieces include voice.
23. Regarding claim 23, the further limitation of claim 18, see the preceding argument with respect to claims 18 and 17. Gang teaches themes in the user selection, and a system for identifying audio preference information associated with the selection.
24. Regarding claim 24, see the preceding argument with respect to claim 12. Gang teaches a system with these features, and it is inherent, in this system, that a processor

is used for compiling the audio characteristic information and for comparing the audio preferences to that information.

25. Regarding claim 25, the further limitation of claim 24, see the preceding argument with respect to claims 24 and 2. Gang teaches the subject matter information.

26. Regarding claim 26, the further limitation of claim 24, see the preceding argument with respect to claims 24 and 3. Gang teaches that the audio pieces include music.

27. Regarding claim 27, the further limitation of claim 24, see the preceding argument with respect to claims 24 and 4. Gang teaches that the audio pieces include voice.

28. Regarding claim 29, the further limitation of claim 24, see the preceding argument with respect to claims 24 and 17. Gang teaches that the user selects a theme.

29. Regarding claim 30, the further limitation of claim 24, it is inherent that there is memory at the user station for storing the selected audio piece.

30. Regarding claim 31, the further limitation of claim 24, see the preceding argument with respect to claims 24 and 8. Gang teaches a transmitter coupled to the processor for transmitting the audio piece and the audio characteristic information.

31. Regarding claim 32, the further limitation of claim 31, see the preceding argument with respect to claims 24 and 9. Gang teaches the transmission over a broadcast network.

32. Regarding claim 33, the further limitation of claim 24, see the preceding argument with respect to claims 24 and 11. Gang teaches the transmission to a user station over a computer network.

33. Regarding claim 34, see the preceding argument with respect to claim 12. Gang teaches these limitations, and teaches a tuner (p.7, ¶ 0074, lines 8-13).

34. Regarding claim 35, the further limitation of claim 34, see the preceding argument with respect to claims 34 and 2. Gang teaches the subject matter information.

35. Regarding claim 36, the further limitation of claim 34, see the preceding argument with respect to claims 34 and 3. Gang teaches that the audio pieces include music.

36. Regarding claim 37, the further limitation of claim 34, see the preceding argument with respect to claims 34 and 4. Gang teaches that the audio pieces include voice.

37. Regarding claim 39, the further limitation of claim 34, see the preceding argument with respect to claims 34 and 29. Gang teaches that the user selects a theme.

38. Regarding claim 40, see the preceding argument with respect to claims 18 and 11. Gang teaches these features.

39. Regarding claim 41, the further limitation of claim 40, see the preceding argument with respect to claims 40 and 2. Gang teaches the subject matter information.

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40. Regarding claim 42, the further limitation of claim 40, see the preceding argument with respect to claims 40 and 3. Gang teaches that the audio pieces include music.

41. Regarding claim 43, the further limitation of claim 40, see the preceding argument with respect to claims 40 and 4. Gang teaches that the audio pieces include voice.

42. Regarding claim 45, the further limitation of claim 40, see the preceding argument with respect to claims 40 and 29. Gang teaches that the user selects a theme.

Claim Rejections - 35 USC § 103

43. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

44. Claim 5, 16, 22, 28, 38, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gang as applied to claim 1 above, and further in view of Yee et al., U.S. Patent 5,210,611 (hereinafter Yee).

45. Regarding claim 5, the further limitation of claim 1, Gang teaches a system with the features of claim 1, however Gang does not teach that the audio piece includes an advertisement. Yee teaches an automatic tuning radio, wherein it automatically tunes the station based on broadcast subject matter information. Yee teaches a system,

wherein the audio piece includes an advertisement (Col. 1, lines 54-59). It would have been obvious for one of ordinary skill in the art to combine the teachings of Gang with those of Yee for the purpose of choosing the preferred content of the listener.

46. Regarding claim 16, the further limitation of claim 12, see the preceding argument with respect to claims 12 and 5. The combination of Gang and Yee teach that the audio piece includes an advertisement.

47. Regarding claim 22, the further limitation of claim 18, see the preceding argument with respect to claims 18 and 5. The combination of Gang and Yee teach that the audio piece includes an advertisement.

48. Regarding claim 28, the further limitation of claim 24, see the preceding argument with respect to claims 24 and 5. The combination of Gang and Yee teach that the audio piece includes an advertisement.

49. Regarding claim 38, the further limitation of claim 34, see the preceding argument with respect to claims 34 and 5. The combination of Gang and Yee teach that the audio piece includes an advertisement.

50. Regarding claim 44, the further limitation of claim 40, see the preceding argument with respect to claims 40 and 5. The combination of Gang and Yee teach that the audio piece includes an advertisement.

Conclusion

51. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sass, U.S. Patent No. 6,823,225.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel R. Sellers whose telephone number is 703-605-4300. The examiner can normally be reached on Monday to Friday 9am to 6:30pm with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 703-305-4040. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DRS



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SUPERVISORY PATENT EXAMINER